No.

In the Supreme Court of the United States

BRIAN S. COLLIER,

Petitioner,

v.

GARY HARROLD AND CAROL HARROLD,

Respondents.

On Petition for a Writ of Certiorari to The Supreme Court of Ohio

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

1. Are Ohio statutes § 3109.11 and § 3109.12 unconstitutional in that they infringe on a parent's fundamental right to make decisions concerning the care, custody and control of one's child, which is protected by the due process clause of the Fourteenth amendment to the United States Constitution?

2. Do Ohio statutes § 3109.11 and § 3109.12 violate the holding outlined in *Troxel v. Granville* (2000), 53 U.S. 57 by:

    A. Violating the presumption that a fit parent's decision on visitation is in the child's best interest;

    B. Violating the "special weight" requirement of *Troxel* to the wishes of the parent in determining whether to allow visitation to a non-parent

3. What is the precise scope of the parental due process right in the visitation context?

RULE 14.1b STATEMENT

A list of all parties to the proceeding in the Court whose judgment is the subject of this petition is as follows:

In the Supreme Court of Ohio:

Appellees: The Estate of Renee Harrold, Gary Harrold and Carol Harrold represented by Jackwood Law Offices, Rosanne K. Shriner and Renee J. Jackwood, 132 East Liberty Street, Wooster, Ohio 330-264-2216

Appellant: Brian S. Collier
Represented by Gregory L. Hail
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Amicus Curie:

Coalition For The Restoration of Parental Rights
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RULE 29.6 STATEMENT

Petitioner has no parent corporation, and no publicly held company owns 10% or more of its stock.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner, BRIAN S. COLLIER, respectfully petitions for a Writ of Certiorari to review the judgment of the Supreme Court of Ohio in this case.

OPINION BELOW

The Opinion of the Supreme Court of Ohio (App., Infra pp. 1a-17a) is known as Harrold v. Collier, and reported at 107 O.St.3d 44, 836 N.E.2d 1165 and is found in the appendix herein at pages 1a-17a. The Opinion of the Ohio Court of Appeals, Ninth Judicial District (App., Infra pp. 18a-32a) is reported as 2004-OHIO-4331 and is found in the appendix herein at page 18a-32a. The original trial court decision is not reported, is known as the Estate of Renee Harrold, Plaintiff v. Brian S. Collier, Defendant v. Gary Harrold and Carol Harrold, Third-Party Defendants, Case No. 97 1440 PAR, ID No. 32043 and is found in the appendix of the Petition (App., Infra pp. 33a-44a). The Magistrate's Opinion is not reported and is found in the Appendix at page 46a-51a.

JURISDICTION

The judgment of the Supreme Court of Ohio was entered on October 10, 2005. This appeal is filed pursuant to the authority of 28 U.S.C. § 1257(a).

STATUTORY AND REGULATORY PROVISIONS INVOLVED

This case involves an interpretation of three Ohio statutes: R.C. § 3109.11; R.C. 3109.12; and R.C. § 3109.051. All

three statutes are lengthy and all three are set out in the appendix:

R.C. § 3109.11 at pages 52a-53a
R.C. § 3109.12 at pages 54a-56a
R.C. § 3109.051 at pages 56a-73a

STATEMENT OF THE CASE

Renee Harrold and Petitioner shared a relationship and had a daughter, Brittany Renee Collier, born on July 28, 1997. That same year, paternity was established and Petitioner began paying support.

The child and her mother resided with the mother's parents, Gary and Carol Harrold, Respondents herein. There was much litigation between Petitioner and Renee Harrold during the child's first years. That litigation involved visitation between Petitioner and his daughter and other issues, however, on October 10, 1999, Renee Harrold, succumbed to cancer. Following Renee's death, Gary and Carol Harrold were granted temporary custody of the child. A great deal of litigation again ensued between the Petitioner and Gary and Carol Harrold regarding visitation, payment of medical expenses and other issues. Hearings were held, decisions made and decisions appealed. On Petitioner's motion the trial court awarded custody of Brittany to Petitioner. Gary and Carol Harrold appealed but the appeal was denied and Petitioner gained custody of his child (App., Infra p. 47a). Respondents filed a motion for grandparent visitation rights of Brittany. A hearing was held and the Magistrate granted the grandparents visitation (App., Infra p. 50a). The Petitioner appealed to the Judge from the Magistrate's Decision, which appeal was granted (App., Infra p. 44a).

The Harrolds appealed to the Ohio Ninth District Court of Appeals. The Court of Appeals reversed the Juvenile Court's dismissal of Appellees' motion for visitation (App., Infra p. 32a).

Petitioner appealed to the Supreme Court of Ohio, which Court affirmed the judgment of the Court of Appeals (App., Infra p. 17a), and remanded the case.

Petitioner takes this appeal from the Opinion of the Supreme Court of Ohio.

RULE 14(1)(g)(i) STATEMENT LOWER COURT RULINGS

(A) The trial court

Petitioner opposed visitation for the Harrolds from the very moment he acquired custody of his child. The findings of fact of the Magistrate in the original motion hearing in May of 2003 indicate "Brian Collier is opposed to grandparent visitation for Gary and Carol Harrold" (App., Infra p. 48a). The Magistrate found that the "actions of Brian Collier have not been in the best interest of his daughter, Brittany Collier" (App., Infra p. 50a) and the Magistrate granted the visitation.

In the appeal to the juvenile Judge, the court's order states "The father, Brian Collier, has made it perfectly clear that he does not wish visitation between Brittany and the grandparents." (App., Infra p. 40a). The Court went on to say that his (Petitioner's) wishes "are to be considered, but the best interests of Brittany in maintaining a relationship with the grandparents outweighs that consideration. Brian Collier has stated on the record that he will resist visitation, which will likely create confusion for Brittany, but that is

outweighed by the relationship which she has with her grandparents." (App., Infra pp. 40a-41a). The trial court's decision discussed the applicability of *Troxel v. Granville* (2000), 530 U.S. 57, 120 S.Ct. 2054, 147 L.Ed. 49 to this case and found that "in cases such as this one, the court should only order visitation with a grandparent over the opposition of the parent when the court finds overwhelming evidence to support forcing visitation for the benefit of the child. It is presumed that the best interests of the child is the parent's wishes, absent a finding that the parent is unfit to make an informed decision." (App., Infra p. 42a). Based upon the *Troxel* rational, the trial court denied the grandparent visitation.

Petitioner felt so strongly about the issue he was willing to go to jail (and in fact did) rather than permitting the visitation during his appeal process (App., Infra p. 45a).

(B) The State Court of Appeals

In the next appeal, the appeal to the Ninth District Court of Appeals, the Court in it's opinion states "Mr. Collier attested that the trial court violated his constitutional rights to raise his child as he sees fit when, despite his objection, it granted the Harrolds' visitation with Brittany" (App., Infra p. 21a). The Court of Appeals distinguished *Troxel* from this case:

> 1. Unlike the Washington statute in Troxel, the Ohio statutes governing grandparent visitation rights do not allow any person, at any time, to seek visitation, and in that sense are not "sweepingly overbroad" (App., Infra p. 26a).